

**VIRGINIA BOARD OF MEDICINE
LEGISLATIVE COMMITTEE MINUTES**

Friday, September 22, 2006

Department of Health Professions

Richmond, VA

CALL TO ORDER: The meeting of the Committee convened at 8:40 a.m.

MEMBERS PRESENT: Stephen Heretick, JD, Chair
Gen. Clara Adams-Ender, RN, MSN
Ann Burks, JD
Malcolm Cothran, MD
Suzanne Everhart, DO
Brent Lambert, MD
Robert Mosby, MD

MEMBERS ABSENT:

STAFF PRESENT: William L. Harp, MD, Executive Director
Barbara Matusiak, MD, Medical Review Coordinator
Jennifer Deschenes, Deputy Director, Discipline
Kathleen Nosbisch, Deputy Executive Director, Practitioner
Information
Elaine Yeatts, DHP Policy Analyst
Emily Wingfield, Assistant Attorney General
Colanthia Morton Opher, Recording Secretary

OTHERS PRESENT: W. Scott Johnson, HDJN
Susan Ward, VHHA
Beatrix Hamm, UMDNJ
Andrea Ciccone, NBME
Mike Jurgensen, MSV

ROLL CALL

APPROVAL OF MINUTES OF AUGUST 19, 2005 and JANUARY 27, 2006

Dr. Everhart moved to approve the minutes of the August 19, 2005. The motion was seconded and carried. Dr. Mosby moved to approve the minutes of the January 27, 2006. The motion was seconded and carried.

ADOPTION OF AGENDA

Gen. Adams-Ender moved to adopt the agenda as presented. The motion was seconded and carried.

PUBLIC COMMENT

Mike Jurgensen reported to the Board that the Medical Society of Virginia is currently working with various groups involved in laser therapy and addressing the possibility of needed

regulations. Mr. Jurgensen advised that various options have been discussed including additional certification and/or licensure under DOPHR.

NEW BUSINESS

Regulatory Actions

Ms. Yeatts provided a current chart of regulatory actions and drew the Board's attention to those items that require action by the Board at the October 19, 2006 meeting. Ms. Yeatts also pointed out the amendment to the major conductive block and post graduate training regulations. Ms. Yeatts advised that the mixing, diluting and reconstituting regulations are currently in the Governor's office.

Adoption of Notice of Intended Regulatory Action (NOIRA) – recommended revisions to the regulations for public participation guidelines

Dr. Everhart moved to recommend the adoption of the notice to amend Chapter 10, Public Participation Guidelines. The motion was seconded and carried.

Adoption of proposed regulations for volunteer restricted license for practice in free clinics - replacing emergency regulations currently in effect

Ms. Burks moved to recommend for adoption the proposed regulations to replace the current emergency regulations for volunteer restricted licensed for practice in free clinics. The motion was seconded and carried.

Adoption of final regulations for reporting of malpractice paid claims on physician profile no comment on the proposed regulations

Dr. Cothran moved to recommend for adoption the final regulations for reporting malpractice paid claims on physician profile. The motion was seconded.

After discussion, Gen. Adams-Ender moved to amend 18VAC85-20-290 (C4) to say if "a" doctor is dismissed... " The motion was seconded and carried unanimously.

Adoption of proposed regulations for pain management – replacing guidance documents currently in effect

Ms. Yeatts advised that there were no comments received on the Board's NOIRA published. Dr. Harp reviewed two guidance documents addressing the use of opioids and also the DEA's notice regarding the dispensing of controlled substances for the treatment of pain published in the Federal Register, September 6, 2006. Dr. Harp advised that these documents were used to develop the proposed regulations being considered for recommendation. Dr. Cothran expressed his thanks for Dr. Harp for taking such a complex set of guidelines and setting them out into concise and usable suggestions for consideration. Dr. Cothran pointed out that once these guidelines are done, there will be a big adjustment in the manner physicians currently practice

and it will require considerable education by the Board to inform the practitioners about the new regulations.

Ms. Yeatts suggested that language be placed in the ethical standards of practice and a reference in 18VAC85-20-400 to make it applicable to all prescribing licensees.

Dr. Everhart moved to recommend the issuance of a NOIRA to be published for physician assistants-Chapter 50 and nurse practitioners – Chapter 40 to address this issue. The motion was seconded and carried.

Dr. Everhart moved to include the amendment to the ethical regulations. The motion was seconded and carried.

Dr. Cothran suggested that informed consent be placed in the contract between the patient and the practitioner.

Ms. Burks moved to amend section 410 (A) to say – contract, which shall include informed written consent by the patient. The motion was seconded and carried.

Dr. Everhart moved that the requirement for medical records as specified on page 33 of the packet be included in a new subsection 410(E). The motion was seconded.

After discussion, Dr. Lambert called the question. Dr. Everhart moved to include 410 (E) the medical record requirement as listed on page 33 and request staff to wordsmith where appropriate. The motion carried 6 to 1 with Dr. Cothran opposing.

Dr. Cothran moved to include appropriate preparatory language in 410 that references back to 400. The motion was seconded and carried. Mr. Nebiker suggested taking a look at §54.1-3303 and the practitioner patient relationship.

Adoption of proposed regulations for a waiver of continuing education for medical examiners – see comment from Office of Chief Medical Examiner

Dr. Lambert moved to recommend the proposed regulations for a waiver of continuing education to full Board in October. The motion was seconded and carried.

Adoption of final regulations for certified professional midwives – replacing emergency regulations currently in effect– only comment was support for proposed regulations

Dr. Cothran moved to replace the emergency regulations with identical final regulations. The motion was seconded. Ms. Yeatts pointed out the disclosure to clients that midwives do not have prescriptive authority. The motion carried unanimously.

Adoption of proposed regulations for collaboration and consultation for certified nurse midwives - replacing emergency regulations currently in effect

Ms. Yeatts advised that the comment period closes on October 4th and she expects to receive at least one comment. Ms. Burks moved to defer recommendation until the comment period closes. The motion was seconded and carried.

Recommendation for amendments to the chiropractic continuing education regulations

Dr. Harp advised that Dr. Hoffman noted that the description of the approval of continuing education for DCs is incorrect as stated in section 18VAC85-20-235: 1(a) and submits recommended language to address this issue. Dr. Cothran moved to recommend fast-track adoption to the Full Board. The motion was seconded and carried. The language recommended to replace the current 18VAC85-20-235(1)(a) is "Type I hours for chiropractic shall be clinical hours which are approved by a college or university accredited by the Council on Chiropractic Education or any other organization approved by the Board.'

Recommendation for an amendment to the advertising regulations

Dr. Mosby moved to recommend the adoption of a NOIRA to place the burden of proof in statements of advertisement on the licensee and close a problematic loophole. The motion was seconded and carried.

Dr. Everhart moved to fast-track the NOIRA on advertising regulations contingent on advice from counsel that this action fits the description of a fast-track item. The motion was seconded and carried.

Recommendation for deletion of two Board guidance documents

Dr. Cothran moved to delete 85-8 and 85-10 based on the recent regulations covering treatment of self and family. The motion was seconded and carried.

Recommendations for amendments to the Board Bylaws

Dr. Harp advised that the Executive Committee looked at the bylaws in early April. Most of the changes were to update information regarding APA and FOIA where appropriate.

After discussion, Dr. Mosby moved to recommend to the Full Board the amendments as listed below to the existing bylaws. The motion was seconded and carried.

Article II subsection (E) – In the event of a vacancy of the office of secretary-treasurer, the president shall appoint a member to fill the vacancy for the remainder of the term.

Article III under Report of Advisory Boards change Certified Professional Midwives to Midwifery

Article IV (A) add authorized by code section §54.1-2900 – striking chapter

Credential Committee – add “in accordance with §54.1-2957.01”

(G) strike section

Section 2 – strike Executive Committee and Legislative Committee and add or any of the standing committees

Article V - strike everything after June meeting and delete section 2.

Draft Laser Hair Removal Guidance Document

Dr. Harp advised that the draft document was derived from the work of the Laser Ad Hoc Committee in 2005. The Committee’s charge was to determine whether or not laser/light-based hair removal was considered the practice of medicine. Dr. Harp reminded the Board that the Ad Hoc Committee’s recommendation was that light based devices used solely for the purpose of hair removal was not considered the practice of medicine and that any procedure that involved the incision, revision, alteration or destruction of human tissue was the practice of medicine.

Dr. Everhart expressed her reservations about the document and the recommendation of the Committee. Dr. Everhart then moved that a decision to recommend to the Full Board be delayed pending further review and possibly work in conjunction with the Medical Society of Virginia, which is working with physician groups on this issue. The motion was seconded and carried.

Ms. Yeatts advised that the introduction of HB1399, which requires laser technicians to be licensed under the Board of Cosmetology, should also be considered.

Dr. Everhart amended her motion to defer action on the guidance document as presented until the Legislative meeting January 26, 2007. The motion was seconded and carried.

Physicians Signing Death Certificates

Dr. Harp acknowledged receipt of Delegate Morgan’s inquiry regarding a long time problem with the timely signing of death certificates. Dr. Harp advised the committee that he met with representatives from the Chief Medical Examiners and Vital Records in 2000 to discuss the issue of timely completion of death certificates and at that time suggested that a statutory change be sought in Code Section §54.1-2914. In 2004, Dr. Cothran chaired an ad hoc committee and the consensus was that the Department of Health would develop an educational module that the Board of Medicine would host as a read only file on its website. Dr. Harp advised that at the October 2005 meeting the Board agreed it was a good idea however, he is not aware of any progress of this module or any other progress on this issue since the last meeting. Dr. Harp pointed out that §32.1-27 of the Code gives the Department of Health the ability to enforce non-compliance as a misdemeanor, and that the Board of Medicine does not have any statutory rights under this code, and therefore can not enforce this law.

After discussion, Dr. Cothran moved that Board decline further action and a letter be written to Delegate Morgan and direct him to Vital Records with the Department of Health who can address his inquiry, and state that the Board of Medicine would be happy to assist the Department of Health if they wish to pursue statutory language that might clarify the current code. The motion was seconded and carried.

Announcements

Dr. Harp announced that Ms. Wingfield will be leaving her position as board counsel and assuming the Chief Deputy Director's position at the Department of Health Professions October 16, 2006.

Dr. Harp introduced Dr. Beatrix Hamm and Ms. Andrea Piccone and stated they had been with the board for a couple of days observing board processes and interviewing staff on general procedures.

Mr. Heretick stated that last year Virginia was rated as the number one best managed state in the nation. Mr. Heretick also stated that at a recent meeting with the FSMB on Physician Competency, Virginia is recognized nationally as a leader, an innovator in medical care regulations, and he attributes a lot of credit for that recognition to Mr. Nebiker. Mr. Heretick acknowledged that the legacy that Mr. Nebiker leaves to the Commonwealth, to the practice of medicine, and the lives of citizens of the state should not be forgotten.

Mr. Nebiker then received a standing ovation.

Mr. Nebiker remarked that the staff at the agency is outstanding and the Board of Medicine is well served. He expressed his appreciation for the kind comments and remarked that after his departure from the agency there will be more good people coming.

Adjournment

With no further business to conduct, the meeting adjourned at 11:49 a.m.

Stephen E. Heretick, JD
Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary